

## I. INTRODUCTION

The Federal Tax Reform Act of 1986 created the Housing Tax Credit (HTC) Program (see Section 42 of the Internal Revenue Code) for qualified residential rental properties. The HTC offers a reduction in tax liability to owners and investors in eligible low income rental housing projects involving new construction, or acquisition with substantial rehabilitation.

The Minnesota Housing Finance Agency (MHFA) has been designated by the Minnesota Legislature as the primary allocating Agency of HTC in Minnesota. Qualified local cities and counties have also been designated by the Legislature as suballocators of the HTCs.

Section 42 of the Internal Revenue Code (“Section 42”) requires that tax credit allocating agencies develop an allocation plan for the distribution of the tax credits within the jurisdiction of the allocating agency. The Allocation Plan (Exhibit A) combines state and federally legislated priorities with other priorities established by the MHFA following receipt of comments from the public, local municipalities and federal agencies. The Allocation Plan is subject to modification or amendment to ensure the provisions conform to the changing requirements of the Section 42 and the applicable state statute.

The MHFA is also required to monitor HTC projects during the Compliance Period as well as notify the Internal Revenue Service (IRS) of any noncompliance with the requirements of Section 42 of which it becomes aware. All applicants should review the proposed IRS Rules for Monitoring Compliance enclosed in this packet. In addition, the MHFA will monitor the projects during the remaining term of the Declaration of Land Use Restrictive Covenants (Declaration).

**This information summarizing the HTC program is provided as a brief overview. It is not comprehensive and should not be relied upon for income tax purposes. Individual applicants and investors are solely responsible for compliance with Section 42.**

The MHFA is under no obligation to undertake an investigation of the accuracy of the information submitted in an application. MHFA's review of a proposed housing project does not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed, or rehabilitated pursuant to the HTC program. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability and risk of the project. If any information submitted by the applicant in connection with the allocation of HTCs by the MHFA is later found to have been incorrect or there has been a subsequent change in any material respect, it is the responsibility of the applicant to inform the MHFA and to request a reexamination of the application.

**This manual is provided solely for use in applying for the housing tax credits from MHFA and may not be relied upon in structuring or investing in specific transactions, compliance with the Internal Revenue Code, Treasury Regulations or any other laws or regulations governing Tax Credits. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of housing tax credits.**

## **II. MHFA MISSION STATEMENT**

We are committed to meeting Minnesotan's needs for decent, safe, affordable homes and stronger communities.

The mission of the MHFA Multifamily Division is to preserve and provide decent and affordable rental housing and stronger communities for low and moderate income households by providing underwriting, technical, management, marketing, social service and housing related expertise in the development and administration of multifamily housing.

### III. ROLE OF THE SUBALLOCATORS

Suballocators were authorized by the 1990 legislature to allocate and monitor tax credits to eligible projects in their cities or counties. The suballocators award their allotted tax credits in Round 1 of competition. Any unused tax credits are returned to the MHFA prior to the second competition. In subsequent rounds, projects located in suballocator jurisdictions may apply directly to the MHFA. In Round 3, where partially funded projects receive priority, a suballocator may recommend one (1) partially funded project for additional tax credits.

In 1999, a suballocator may elect to enter into a demonstration program in which the participating suballocators will enter into an agreement with MHFA under which MHFA may perform certain functions related to the credit allocation and compliance monitoring.

The MHFA will ask the suballocator for comments regarding any project that falls within a suballocator's jurisdiction.

## IV. POLICIES AND PROCEDURES

### A. Application Cycle:

Beginning in 1999, the Minnesota Housing Finance Agency intends to revise its allocation procedure for housing tax credits in two respects.

The primary goal is to convert the tax credit allocation process from three funding cycles to two funding cycles annually, beginning with the 1999 tax credit allocations. The reason for this change is that there have been few tax credits available for the second round in the past few years.

In addition, MHFA will initiate a new process for year 2000 credits under which project selection and reservation of credits will take place in the fall of the previous year, so that tax credit developers can begin construction in the spring. This revised allocation process will be implemented for year 2000 credits, which will be allocated in the fall of 1999.

1999 will be a transition year, with most of the calendar year 1999 tax credits allocated in the spring of 1999, and the year 2000 credits (together with any 1999 national pool credits or returned credits) reserved in the fall of 1999. In the 1999 Fall Round, MHFA proposes to reserve amounts for selected year 2000 credit applications, and to give priority to 1999 and earlier applications which require supplemental credit allocation up to the remaining balance of 1999 Credit Authority.

After 1999, the Spring Round will offer for allocation, credit authority remaining or returned since the Fall Round. Additionally, the Spring Round will establish a waiting list for credits that may be returned by projects that are not able to complete carryover requirements by November 1st of the allocation year.

MHFA will accept applications in accordance with the Allocation Plan attached as Exhibit A. The closing date for receipt of applications for each competition is as follows for 1998 Application closing dates subsequent to the first competition may be approximate depending upon availability of tax credits and ability of MHFA to process applications.

#### **First Round**

<u>Request for Proposal Published:</u>	<u>12/14/98</u>
<u>Application Deadline:</u>	<u>2/18/99</u>
<u>Selections Announced:</u>	<u>5/28/99</u>
<u>Reservation Fee Due:</u>	<u>6/28/99</u>

#### **Second Round - 1999**

#### **First Round - 2000**

<u>Application Deadline:</u>	<u>7/22/99</u>
<u>Selection Announced:</u>	<u>10/22/99</u>
<u>Reservation Fee Due:</u>	<u>11/15/99</u>

#### **Second Round - 2000**

<u>Application Deadline</u>	<u>2/17/00</u>
<u>Selection Announced</u>	<u>4/27/00</u>

The MHFA will base its selection decision upon the application and exhibits received on the application due date.

Applications must be delivered to the MHFA office no later than 4:30 p.m. on the above dates.

**If the application and all required exhibits are not legible and complete, the application will be returned. No applications, exhibits or documentation will be accepted after the application due date unless requested by the MHFA.**

Applications will not be accepted by telecopier.

Applications should be submitted to:

Minnesota Housing Finance Agency  
Multifamily Development  
Housing Tax Credit Program  
400 Sibley Street, Suite 300  
St. Paul, MN 55101-1998

Individuals on the Housing Tax Credit interested parties mailing list will automatically receive notification of the submission dates.

Upon receipt of an application, as required by federal law, MHFA will notify the Chief Executive Officer of the local jurisdiction where the proposed project is planned. This notification will include characteristics of the proposed HTC project and provide an opportunity for the local unit of government to comment on the project. The MHFA will also notify the local PHA, City Administrator, and the suballocator.

Information submitted in an application for Housing Tax Credits is public information which is accessible to the public pursuant to Minnesota Statutes, Chapter 13.

**B. Multiple Buildings:**

Projects may include “multiple buildings” having similarly constructed housing units, provided the buildings are located on the same tract of land, are owned by the same person for Federal income tax purposes and are financed pursuant to a common plan of financing. Scattered site buildings on different tracts of land will also qualify if the project meets all of the other requirements described above and the project is 100% rent restricted.

**C. Nonprofit Set Aside:**

Federal law requires that 10% of the total annual credit available be reserved each year exclusively for projects involving ownership by nonprofit organizations which have a 501 (c)(3) or (c)(4) designation. The nonprofit must be local, organized and incorporated in the state of Minnesota, have significant experience in Minnesota as a sponsor, owner, or manager of low income housing and be a certified Minnesota Community Housing Development Organization (CHDO). The nonprofit must have as one

of its exempt purposes the fostering of low income housing, and must materially participate in the ownership, development and operation of the low income project throughout the term of the Declaration. A local unit of government or a housing and redevelopment authority does not qualify as a nonprofit organization under Section 42.

The intent of Section 42 is to ensure that a for-profit entity or individual does not set up a “sham” nonprofit in order to tap the 10% nonprofit set aside. This could include establishing a nonprofit for the specific project, without any history, experience, local community involvement, or financial strength.

The nonprofit organization must demonstrate, to the satisfaction of MHFA, that the nonprofit is acting independently and free from influence or control of the for-profit project team members. MHFA reserves the right to contact the officers and directors of the nonprofit organization to determine their independence.

MHFA will require that all nonprofits applying for the 10% nonprofit set aside, and/or nonprofit application fee, disclose all identity of interest between the nonprofit and any member of the for-profit project team. An identity of interest would include any officer, director, partner, stockholder, relative, seller or owner of land or building involved, processing agent, real estate salesperson or broker, employee, or anyone acting to represent any for-profit member of the project team who controls or influences the decisions of the nonprofit.

If there is an identity of interest, affiliation, or conflict, as determined by MHFA, the MHFA will disqualify the nonprofit from receiving credits from the 10% set aside and/or applying under the reduced nonprofit application fee. In making this determination, MHFA will consider the following:

1. The nonprofit's history, funding sources and composition of its board;
2. Past experience and anticipated future activities of the nonprofit, including involvement in the local community;
3. Sources and manner of funding of the nonprofit;
4. The nonprofit's degree of financial strength for completion and operation of the project during the term of the Declaration;
5. The relationship of the principals involved in the formation of the nonprofit organization with for-profit individuals concerning the tax credit application. A nonprofit cannot be affiliated with or controlled by a for-profit entity by:
  - a. Having more than a 25% share of common board members; or
  - b. Having more than 25% of its funding, directly or indirectly, from the parent entity; or
  - c. Having any other type of association which is not considered an arms-length affiliation.
6. The extent to which the nonprofit materially participates within the meaning of Section 469(h) of the Internal Revenue Code in the development and operation of the project

throughout the term of the Declaration. MHFA will also look at the nonprofit's involvement in the project related construction, management, ownership interest, sharing of fees and funding provisions.

7. The nonprofit must either be local, organized and incorporated in the State of Minnesota or have significant housing experience in Minnesota as a sponsor, owner or manager of low and moderate income housing.

Once the nonprofit set aside is exhausted, a nonprofit may apply for credits from the statewide pool after Round 1. If the nonprofit set aside is exhausted during a round, the nonprofit will automatically be eligible for tax credits from the appropriate for-profit set aside and selected based upon its point ranking. (See also the Allocation Plan.)

**D. Rural Development/Small Project Set Aside:**

Eligible projects must have either:

- A Rural Development (RD) financing commitment or;
- A site located in a RD service area (Exhibit R) and consist of twelve (12) or less units.

All projects within this set aside must meet HTC Basic Design Requirements. For scoring purposes, there will be no points awarded for this set aside under the headings "Design Features".

A developer may have a maximum award of two (2) projects within this set aside, each allocation year. Once a project has elected to participate in this set aside, the project may not be transferred to an alternative set aside in the existing round.

**E. Developer and Development Limits:**

During the allocation year, no more than 10% of the State's per capita volume limits (approximately \$580,000) in tax credits may be awarded to any one developer or general partner. No more than \$250,000 in cumulative tax credits may be awarded to any one project.

At the sole discretion of the MHFA, these limits may be waived for projects which involve community revitalization, historical preservation, preservation of existing federally assisted housing, housing with rents affordable to tenants at or below 30% of median income, in response to significant proposed expansions in area employment or natural disaster recovery efforts. The MHFA may also waive these limits during the final reservation round if there are excess tax credits at year end.

Applicants should not assume that this waiver will be automatically provided or rely on this statement when determining the scope of the proposed project.

**F. Unacceptable Practices:**

1. Transfer of Ownership:

The MHFA strongly discourages the Transfer of Ownership in projects that have been awarded tax credits. The Agency feels that for the long term viability of quality housing, the development and management teams making the decisions in developing the tax credit housing need to also own and operate the project for the long term. Any transfer of title of a selected project or

transfer of more than a 50% interest in a general partner or change in a nonprofit partner prior to a date five years after the project has been placed in service will be considered a material change in the project and will be subject to the approval of the MHFA. Sponsors wishing to change or transfer ownership must submit a revised application along with a completed and executed Transfer Of Ownership Form (HTC-27, Exhibit W), a transfer of ownership fee, (See Section IX.) and any other documentation that MHFA deems necessary.

Any unapproved change or transfer of ownership from the date of reservation through five years after the placed in service date will have an effect on all individuals/entities that wish to submit applications in future HTC rounds. Each and every member of the development and management team on each side of the transfer will be penalized as follows:

At the application stage for the year the transfer took place and one year after:

- a. First Transfer (-10 points on each submittal)
- b. Two or More Transfers (-25 points on each submittal)

In addition, if the MHFA becomes aware of a transfer of ownership by an individual or entity without proper notification and approval by the MHFA, the MHFA reserves the right to determine that all parties involved in the transfer will not be eligible for participation in the Minnesota's HTC Program for a period of ten (10) years.



2. Displacement of Section 8 Tenants:

MHFA will not accept applications that have displaced (or will displace) Section 8 tenants in a housing project because rents will be increased above the Section 8 Existing Fair Market Rent limit. Rehabilitation projects that have existing Section 8 tenants may not increase those rents (in Section 8 units only) above HUD's Fair Market Rents after completion of rehabilitation.

MHFA has agreed to partner with the local HUD area office to determine if tenants of rehabilitation projects:

- a. were displaced prior to application;
- b. are displaced after rehabilitation has been completed.

If MHFA and the local HUD area office agree that intentional displacement of Section 8 tenants has occurred, with exception given to lease violations by the tenant, the MHFA will:

- a. recapture any tax credits to a project prior to 8609;
- b. impose a 25 point penalty to all parties involved in ownership/management of the project for future tax credits. The penalty points will remain in place for two years and may be placed against tax exempt tax credit projects, owners, and managers.

3. Changes to Project:

The award of tax credits is based upon information provided in the application and the preliminary plans submitted with the application. Until the property is placed in service, any material changes to the project or building design (i.e., changes in unit mix, unit size, that effect applicable Basic Design Requirements, Additional Design Requirements for Elderly or Families or Design Features required for preference points) as submitted in the application require written notification to and approval from MHFA. Any changes that have not been previously approved by the MHFA could result in a proportional loss of tax credits up to the full amount of the allocation.

4. Late 8609 Application Submissions and/or Filing of Non-Agency Approved 8609s with the IRS

When MHFA becomes aware that a late submission or delay in submission of materials of a complete and acceptable 8609 application package by a development's owner/agent results in the loss of any volume of housing tax credit authority to the State of Minnesota, MHFA reserves the right to determine that all parties involved will not be eligible for future participation in Minnesota's HTC Program for a period of ten (10) years.

When MHFA becomes aware that a development's owner/agent has filed a self-prepared 8609 with the Internal Revenue Service, MHFA reserves the right to determine that all parties involved will not be eligible for future participation in Minnesota's HTC Program for a period of ten (10) years.

**G. Minimum Underwriting Factors:**

A development selected for a reservation of tax credits is selected based upon the underwriting factors relating to maintenance and operating expenses and permanent financing stated by the applicant in its application and as approved by MHFA (See Sec. VI B). These factors will be monitored throughout the tax credit process until completion of IRS Form 8609. MHFA WILL NOT ALLOW ANY SIGNIFICANT ADJUSTMENTS TO THESE FACTORS. Changes in these factors could lead to the revocation of the tax credit allocation.

**H. Identity of Interest:**

The applicant must disclose any and all relationships (generally based on financial interests or family ties) with others involved in the project. A written disclosure to the MHFA is required for all parties.

**I. Disclosure and Eligibility of Development Team:**

The applicant must also disclose the names and addresses, including corporate officials where applicable, of all parties which have a significant role in the project ("significant parties"). These significant parties include, but are not limited to: general partners, accountants, architects, engineers, financial consultants, any other consultants, management agents and the general contractor. (See HTC-19, Exhibit N, Development Team Resume.) MHFA must be satisfied that those who will own and operate the project are familiar with and prepared to comply with the requirements of the program.

The following significant parties are ineligible to participate in the Tax Credit Program:

1. Significant parties who have been convicted of, enter an agreement for immunity from prosecution from, or plead guilty, including a plea of no lo contendere, to: a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records are ineligible.
2. Significant parties who are currently debarred from any Minnesota program, other states' program, or any federal program are ineligible.
3. Significant parties who have serious and persistent compliance monitoring violations are ineligible at the sole discretion of the MHFA.
4. Significant parties having an Identity of Interest with persons or entities falling into any of the above categories may not be eligible at the sole discretion of MHFA.

The MHFA will also consider the following factor when evaluating an application for a tax credit allocation:

1. The ability and capacity of the development team to proceed expeditiously to complete the proposed development.
2. The prior record of the development team in meeting MHFA and IRS reporting requirements.

3. The experience of the development team in developing and managing similar residential housing

Proposed projects from applicants that do not appear to have the experience, capacity or ability will not receive further consideration in the current funding cycle.

#### **J. Determination of Credit Amount:**

Federal law mandates that, although a proposed project may be eligible for up to 70% or up to 30% present value credit amount, the MHFA may not allocate more credit than is necessary for the financial feasibility of the project and its viability as a qualified affordable housing project throughout the compliance period.

After a project meets the development selection criteria, including marketability, the MHFA will evaluate each proposed project, taking into consideration:

1. Development costs, including; developer fees, builder profits, contractor overhead, and general conditions.
2. All sources and uses of funds.
3. Projected income and expenses.
4. Proceeds expected to be generated from the sale of tax credits, including historic tax credits.
5. The difference between total project costs and total available financing resources, which is referred to as the GAP. A calculation is made to determine the amount of tax credits needed by the project to fund the GAP over a 10 year period, based on the estimated market value of the tax credits.

Based on this evaluation, MHFA will estimate the amount of credit to be reserved for each application. This determination is made solely at MHFA's discretion and is not a representation as to the feasibility of the project. Rather, it will serve as the basis for making a reservation of credits. The amount of the tax credit can change during the process due to variations in cost, mortgage amount, tax credit percentage, syndication proceeds, etc.

This analysis to determine the maximum amount of tax credits will be done at the time of application, at the time a carryover allocation is approved, and at the time the project is placed in service, providing all project costs are finalized and certified.

If there are changes in sources and/or uses of funds or other material changes, the MHFA will adjust the tax credit amount to reflect the changes, and the tax credit may be reduced. Any additional tax credits for the project will depend upon the availability of credits.

#### **K. Requests for Additional Credit Amounts**

Projects which have had a justifiable increase in eligible basis or previously received a partial allocation may be eligible to apply for additional tax credit amounts. If an 8609 has been issued, the project is not eligible for additional tax credits.

Developers who have a MHFA reservation from the current year will be required to submit a revised application (HTC-1), documentation supporting the increased amount of credits requested, and a supplemental application fee. A complete application package with all exhibits and a full application fee will be required from developments previously awarded tax credits from a suballocator.

Developers who have carryover credit allocations from a prior year will be required to submit a revised application package with all exhibits and a full application fee.

**Only one additional tax credit allocation will be permitted by the MHFA.**

Applications that are submitted for an additional tax credit amount will be subject to the same evaluation process described above, the availability of credits, as well as limitations on the time period for allocation of additional credits under Section 42.

**L. Resubmission Process for Non-Select Projects**

In a current allocation year, if a project fails to receive credits in an earlier MHFA round, it may be considered for a reservation of tax credits in a subsequent round in the same year by following these guidelines. Resubmittal must occur by MHFA's HTC applicable application deadline. MHFA will not consider applications resubmitted after the deadline. A resubmitted application must include the following:

1. Cover letter requesting resubmission with MHFA's non-select letter attached.
2. Re-signed and re-dated application form HTC-1 (all changes from the initial application must be highlighted).
3. Any new documentation obtained since the previous application.
4. Evidence of any scoring change (Exhibits C and F).
5. Any documentation MHFA deems necessary (upon request only).
6. The Supplemental Application fee.

MHFA reserves the right to require a full, new application for any project. This right will be exercised if MHFA staff feels the proposed project differs substantially from the initial application.

**M. Qualified Census Tracts and Difficult Development Areas**

Federal law permits, but does not require, MHFA to reserve a greater amount of credits than the legislated maximum credit percentage for projects in areas that meet the following criteria:

1. Qualified census tracts designated by HUD in which 50% of the population has an income of less than 60% of the area median where such areas do not comprise more than 20% of the overall area population; or
2. Difficult development areas designated by HUD as having high construction, land, and utility costs relative to area median income.

**N. Reservations:**

Once staff has ranked applications and determined allowable credit amounts for each application, staff will make recommendations to the MHFA Board of Directors for final approval of the reservation of credits. Each reservation shall be conditioned upon receipt of written certification and evidence of timely progress toward completion of the project acceptable to MHFA and evidence of compliance with federal tax credit requirements. After the ten day adjustment period, the selected applicant will have twenty days to acknowledge selection by returning an executed project profile and the appropriate reservation fee. (See Section IX.)

MHFA reserves the right not to set aside tax credits for any project if it determines, in its sole discretion, that a reservation for such project does not further the purpose and goals set forth in Section II. of this plan. Refer to Section VII.A. for the MHFA Development Selection Procedures.

**O. Administrative Errors:**

If the applicant believes that the MHFA has misinterpreted, was not aware of, or miscalculated the applicant's submission at time of application/reservation, the applicant must submit, in writing, evidence supporting their position within five business days of MHFA's notification of application status. Notification will be in the form of a selection or non-selection letter. The first business day after the date on this letter will be the first day of the notification period.

If the evidence provided by the applicant is accepted and the selection points of the project are affected, the MHFA will re-rank all projects in the order of descending selection points. After an additional five business day period, the MHFA's rankings will stand and reservations for selected projects will be distributed.

**P. Waiting List:**

In the final round, eligible applications will be maintained on a waiting list in the event the MHFA receives National Pool credits or returned credits. The waiting list will follow MHFA's selection point ranking. Generally, projects will be chosen in order, however, depending on time and funds available, the MHFA reserves the right to make modifications to the waiting list. If an application is not selected for a reservation of tax credits by the end of the calendar year, there will be no further consideration. The applicant must submit a new application in the next funding round to receive consideration for a tax credit allocation.

**Q. Carryover Allocations:**

Federal law provides that the MHFA may give a carryover allocation to certain qualified building(s) which are to be placed in service no later than December 31 of the second year after the initial reservation. This provision requires that more than 10% of the expected basis in the project (including land) must be expended by the end of reservation year. The carryover allocation must be executed prior to December 31 of the reservation year. A certification of the expenditure of at least 10% of the expected basis must be performed by a Certified Public Accountant (CPA) and submitted to the MHFA no later than November 1 for Round 1 and November 15 for Round 2 and 3 of the year of reservation. Failure to comply with the submission dates will result in significant penalties as outlined in Section IX. Additional carryover requirements are given in Section VIII.B.

**R. Final Allocations:**

Except for carryover allocations, no allocation of tax credits will be made until a building or project is placed in service, and the proper documentation and fees have been received. In the case of carryover allocations, the final amount of credits is determined when the project is placed in service.

Allocations may be requested as soon as all eligible buildings are placed in service. MHFA may establish, at its sole discretion, required deadlines prior to year-end for final allocation requests in order to permit timely processing of documents.

The tax credit amount which will be allocated is based on MHFA's final determination of the qualified basis for the building or project and a review of the project costs as outlined in Section VIII.C. The allocation may be reduced to comply with federal law based on the final review of the project.

Prior to final allocation the project owner is required to execute and record a Declaration of Land Use Restrictive Covenants.

Non-compliance with the terms of a reservation of credits or a carryover allocation will result in a loss of credits.

**S. Monitoring for Compliance:**

Federal law requires that the MHFA provide a procedure to be used in monitoring for noncompliance of the Code and for notifying the Internal Revenue Service of such noncompliance. MHFA is required to apply the monitoring procedure to all tax credit projects developed since the inception of the HTC

Program. MHFA shall perform such duties in accordance with its Housing Tax Credit Monitoring Plan, copies are available upon request.

1. All tax credit recipients shall submit an annual certification to MHFA in a manner, form, and time established by MHFA. The certification will include, but is not limited to, the submission of completed IRS forms and compliance monitoring fees.

In addition to the annual owner certification requirements, for the first year of the credit period owners shall submit a copy of the Characteristics of Tenant Households report (HTC 30), which details demographic data on households initially occupying units in the development from the placed in service date to the end of the first year of the credit period.

2. An on-site review of tenant certifications including the applications, third-party verifications and supporting documentation of income, as well as general project appearance will be conducted in accordance with MHFA's Compliance Monitoring Plan. The cumulative compliance report including tenant name(s), household information, amount and sources of income, rents, utility allowance or cost, and other unit information is required to be maintained at all times and will be requested at the time of an on-site inspection. All tax credit recipients will also maintain, as part of the official project records, the tenant applications, income certifications and verification of tenants' income.
3. MHFA shall have access to all official project records, including IRS reporting forms, upon reasonable notification. All official project records or complete copies of such records must be made available to MHFA upon request.
4. To accomplish its compliance monitoring responsibilities, MHFA will charge a fee of \$50 per project or \$15 for each unit in the project annually. MHFA reserves the right to adjust the annual fee to offset administrative costs.
5. MHFA will promptly notify the IRS of any project noncompliance within its responsibility as contained in the Code. MHFA has no jurisdiction to interpret or administer the Code, except in those instances where specific delegation has been authorized.

**T. Other Conditions:**

No member, officer, agent, or employee of MHFA shall be personally liable concerning any matters arising out of, or in relation to, the allocation of Housing Tax Credits.

**U. Revisions to the Manual and Allocation Plan:**

To the extent necessary to facilitate the award of Housing Tax Credits that would not otherwise be awarded, this Procedural Manual and attached Allocation Plan may be modified by MHFA from time to time. The Board of Directors may make minor administrative modifications deemed necessary to facilitate the administration of the HTC Program or to address unforeseen circumstances. Further, the Board is authorized to waive any conditions which are not mandated by the Code on a case by case basis for good cause shown.



The attached Plan may be amended for substantive issues at any time following public notice and public hearing. Said hearing will be held at the main offices of the Minnesota Housing Finance Agency in St. Paul, Minnesota. Any substantive amendments will require approval of the MHFA Board of Directors and the Governor.

To the extent that anything contained in the Manual and Plan does not meet the minimum requirements of federal law or regulation, such law or regulation shall take precedence.

## **V. FEDERAL PROGRAM REQUIREMENTS**

### **A. Eligible Activities:**

Eligible activities for tax credits include new construction, or acquisition with substantial rehabilitation.

### **B. Applicable Percentage:**

There are two levels of applicable percentage, depending upon whether the building is new or existing, whether there are rehabilitation expenditures and whether the buildings are federally subsidized.

New Buildings and Qualifying Rehabilitation Expenditures (if neither is federally subsidized):

With respect to new buildings or qualifying rehabilitation expenditures which are not subsidized, the applicable percentage is an amount resulting in aggregate credits having a present value of 70% of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 9%.

New Buildings and Qualifying Rehabilitation Expenditures which are Federally Subsidized and Existing Buildings:

With respect to new buildings and qualifying rehabilitation expenditures which are federally subsidized, and the acquisition of existing buildings that are substantially rehabilitated, the applicable percentage is an amount which results in aggregate credits having a present value of 30% of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 4%.

Qualifying Rehabilitation: Rehabilitation expenditure requirements are established both by state and federal law.

Under Section 42(e), rehabilitation expenses qualify for the credit if the expenditures for each building:

1. Are able to be allocated to one or more low income units or substantially benefit low income units; and
2. Equal the greater of:
  - a. \$3,000 per low income unit; or
  - b. An amount which is not less than 10% of the adjusted basis of the building, as determined pursuant to Section 42(e)(3).

In addition to the Section 42(e) requirements, Minnesota Statutes Section 462A.221, Subdivision 5, requires rehabilitation expenditures for the project of \$5,000 per unit.

It is necessary to acquire an existing building in order to incur qualifying rehabilitation expenditures with respect to that building. In such a case, the costs of acquiring the existing building may be eligible for the 30% present value credit and the rehabilitation expenditures may be subject to the 70% present value credit.

**Existing Buildings:** In order for an existing building to qualify for the 30% credit in connection with substantial rehabilitation, there must have been a period of at least 10 years between the date the building was acquired and:

1. The date it was last placed in service; or
2. The date of its most recent non qualified substantial improvement, whichever is later. See Section 42(d)(2).

Exceptions to the 10 year rule are provided in Section 42(d)(6) for federally assisted buildings, certain low income buildings subject to mortgage prepayment, and buildings acquired from insured financial institutions in default. Certain other situations are exempt from the ten-year rule, such as:

1. A person who inherits a property;
2. A governmental unit or qualified nonprofit group if income from the property is exempt from federal income taxation;
3. A person who gains a property through foreclosure (or instrument in lieu of foreclosure) of any purchase money security interest, provided the person resells the building within 12 months after placing the building in service following foreclosure; or
4. Single family residences that had no use during the prior ten-year period except as an owner-occupied principal residence will not be treated as being placed in service for purposes of the ten-year holding period. Note that although the 10 year rule does not apply, the property must still be substantially rehabilitated to claim the acquisition costs of such a property.

***Federal Subsidies:*** *The determination of whether a building is federally subsidized is addressed in Section 42(I)(2). In general, a building is treated as federally subsidized if there is financing which is tax exempt under Section 103 or there is a "below market federal loan," the proceeds of which were used (directly or indirectly) in the building or its operation.*

***Section 42(i)(2) states that certain types of assistance are below market federal loans and provide for certain exceptions. In addition, there have been Revenue Rulings in this area.***

***HOME Investment Partnership Program (HOME) dollars are not considered a federal subsidy as long as at least 40% of the units in the proposed property are occupied by individuals whose income is 50% or less of area median gross income (AMGI). In high cost areas, at least 25% of the units in the proposed property must be occupied by individuals whose income is 50% or less of area median gross income (AMGI).***

***Assistance derived from federal grants such as HODAG or UDAG will not be treated as a federal subsidy, but must be subtracted from the qualifying basis.***

***Section 8 rental "certificate" or "voucher" subsidies and funds received through the Community Development Block Grant Program (CDBG) are not considered federal subsidies.***

*Under the Federal Home Finance Board (FHFB) Affordable Housing Program, established in 1989, Federal Home Loan Banks are able to make subsidized advances to member banks which are in turn to be used for affordable housing projects in its area. The Treasury Department has ruled that for tax credit purposes, loans provided by the FHFB will not be considered as federal loans. Thus a FHFB below-market rate loan with an interest rate lower than the Applicable Federal Rate (AFR) will be eligible for the 70% tax credit percentage rate for new construction or rehabilitation expenditures rather than the 30% rate.*

*Rural Development (RD) Section 515 loans are considered a federal subsidy.*

*Federal grants are excluded from basis in determining the amount of credit, but do not otherwise affect the availability or amount of the credit.*

*Owners of a property receiving a federal subsidy have the option of treating the subsidy amount as if it were a federal grant and deducting the amount of the subsidy from the qualified basis or costs against which the amount of the credit is calculated.*

*Any type of tax-exempt financing provided by state or local governments where the interest is exempt from Federal taxation under the Internal Revenue Code, is also considered a federal subsidy.*

**C. Review Of Federally Assisted Projects:**

MHFA will review those projects using RD Section 515 Rural Housing Loan funds in accordance with RD Instruction 1944-E Exhibit A-10. No application will be reviewed without the inclusion of a RD Form AD-622, Notice of Pre-application Review Action. It is the responsibility of the applicant to provide MHFA with any additional information or clarification of funding sources as may be necessary. Prior to issuance of the IRS Form 8609, the applicant will submit to MHFA on RD Form 1944-51, Multiple Family Housing Obligation-Fund Analysis. This form will be used in the determination of the final allocation of tax credits to a project.

**D. Federal Subsidy Layering Review:**

Section 911 of the Housing and Community Development Act of 1992 requires that specific procedures be followed for subsidy layering review when tax credits and HUD assistance are combined in a single project. Sponsors of projects which combine HUD assistance and tax credits should be aware that subsidy layering review must be completed for their projects, and should contact MHFA to receive additional information prior to submitting their applications.

**E. Project Eligibility:**

The purpose of the low income housing credit is to assure that a sufficient number of rental units are available on an affordable basis to low income persons. Applicants should be cautioned that this set aside represents the **minimum** number of units that must meet both rent and income restrictions to qualify for tax credits for each year of the credit period. A development must, for a specific period of time, meet one of the following minimum tests:

20/50 Test: To meet the 20/50 Test, a minimum of 20% of the residential units must be both rent restricted and occupied by individuals whose income is 50% or less of area median gross income

("AMGI") (as established for different geographical areas by the U.S. Department of Housing and Urban Development) adjusted for family size.

OR

40/60 Test: To meet the 40/60 Test, a minimum 40% of the residential units must be both rent restricted and occupied by individuals whose income is 60% or less of AMGI adjusted for family size.

Once made, the choice between the 20% at 50% formulation and the 40% at 60% formulation is irrevocable.

**Note: The actual number of restricted units within the project** must be consistent with the initial applicable fraction selected at the time of reservation.

**F. Affordable Rents:**

The rent restrictions for the units are governed by Section 42 and regulations, rulings and other announcements by the IRS. The following summary is not intended to be comprehensive. A violation of the tenant income or rental restrictions in Section 42 may result in project ineligibility or a reduction in basis.

Rent Restriction: For a unit to count as a low income unit, the gross rent may not exceed 30% of the imputed tenant income limitation. The imputed income limitation applicable to a unit equals the permissible income limitation which would apply if the number of individuals occupying the unit were:

1. One individual in the case of a studio apartment; and
2. 1.5 individuals per bedroom in the case of a unit with one or more separate bedrooms.

Therefore, the rent restriction applicable to a low income unit is determined by which test is elected and how many bedrooms are contained in the unit. Current income limits, as derived from the Department of Housing and Urban Development, for Minnesota counties are attached as Exhibit P.

"Gross rent" means all payments by the tenant, including payments to the owner for utilities other than telephone. If the tenant pays utilities directly, the maximum rent that can be paid to the landlord is reduced by a utility allowance determined in accordance with rules under Section 8 of the U.S. Housing Act of 1937 ("Section 8"). IRS Regulations (Section 1.42-10) provide that a building owner must apply RD utility allowances to any rent restricted unit in a building where either the building or any tenant receives RD housing assistance. For a building that is neither HUD nor RD assisted, the building owner may use either the applicable Public Housing Authority (PHA) utility allowance or the owner may obtain a letter from the local utility company providing the estimated cost of that utility for each unit of similar size, construction, and geographic area. RD utility allowance must be used for a building with both HUD and RD assistance. See attached Notice 89-6 for more detailed information.

Federal, state and local rental assistance payments (such as Section 8 payments) made on behalf of the tenant are not included in gross rent.

**G. Tenant Eligibility:**

To be a low income unit for purposes of determining the qualified basis, the tenant must have income at or below 50% of AMGI if the 20/50 Test is elected, or 60% of AMGI if the 40/60 Test is elected. The unit must be rent restricted as set forth above, and the unit must be suitable for occupancy.

The combined household income of all tenants occupying a tax credit eligible unit must be less than or equal to the elected income requirements as shown on Exhibit P. Median income for non-metro counties is the higher of the statewide non-metro median or county median income.

Units are not eligible for tax credits if they are occupied entirely by students who do not file a joint income tax return. Exceptions to this rule are:

1. Unmarried students who are Minnesota Families Investment Program (MFIP) recipients or single parents and their children, as long as neither parent or children are dependents of another individual.
2. Units occupied by students enrolled in a job training program under the Job Training Partnership Act or a similar federal, state, or local program or receiving assistance under Title IV of the Social Security Act will not be disqualified from the program because of this enrollment.

#### **H. Eligible Basis:**

In general, the eligible basis of a building is equal to the building's adjusted basis for acquisition, rehabilitation or construction costs for the entire building, subject to certain conditions and modifications set forth in Section 42(d). As a general rule, the adjusted basis rules of Section 1016 apply, with the exception that no adjustments are made for depreciation. Some of the special provisions for determining eligible basis under Section 42(d) are:

The eligible basis is increased for new buildings and substantial rehabilitation to existing buildings which are located in designated qualified census tracts and difficult development areas.

The cost of the non-low income residential units in a building is included in eligible basis only if the quality of these units does not exceed the average quality of the low income units. If the cost of a non-low income unit exceeds the cost of a low income unit (using the average cost per square foot and assuming the same size) by more than 15%, the entire cost of the non-low income unit must be excluded from the building's eligible basis. If the excess cost is not more than 15%, the owner may make an election to exclude only the excess cost of the non-low income unit(s) from eligible basis.

The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (e.g. carpeting and appliances) is included in determining eligible basis. The cost of tenant facilities (e.g. parking, garages, swimming pools) may be included in eligible basis if there is no separate charge for use of the facilities and they are available to all tenants in the project.

Eligible basis is reduced by federal grants, residential rental units which are above the average quality standard of the low-income units, historic rehabilitation credits, and nonresidential rental property. Buildings located in areas designated as a "qualified census tract" or "difficult development area" may be eligible for an increase in allowable basis.

#### **I. Qualified Basis:**

Qualified basis is the portion of the eligible basis applicable to low income housing units in a building. Qualified basis is the product of a project's eligible basis multiplied by the applicable fraction.

**J. Applicable Fraction:**

The applicable fraction is the lesser of:

1. The unit fraction, which is the number of low-income units in a building divided by the total number of residential rental units; or
2. The floor space fraction is the total floor space of the low income units in the building divided by the total floor space of the residential rental units in the building.

An on-site manager's unit is not considered a residential rental unit and must not be included in the numerator or denominator for calculating the applicable fraction.

Throughout the planning, construction and placed in service periods, the applicable fraction has different nuances. At initial application and at carryover, the **“estimated project applicable fraction”** will be used. It is an approximate goal that the developer is striving to attain. It is calculated by project in order to obtain a rough estimate of the percentage of eligible units and square footage needed and an estimate of the total amount of tax credits necessary for a particular project.

At the time that the placed in service application for 8609 is made, the **“targeted applicable fraction” for each building** is calculated. The targeted applicable fraction is determined on a building by building basis. Each building in a multiple building development could have a different applicable fraction. Because the estimated project applicable fraction is approximate, the targeted applicable fraction calculated by building will frequently differ unless the project has a 100% applicable fraction. The targeted applicable fraction is also listed as part of the extended use criteria in the Declaration of Land Use Restrictions which is recorded and remains with the property.

**K. Economically Integrated Projects:**

Projects under common ownership and management that have tax credit units and market rate units are termed economically integrated projects. These projects receive priority points for selection. (See Project Selection VII.) In an economically integrated project each building must have an applicable fraction of less than 100%. All buildings must be expected to have comparable applicable fractions with necessary variations due to building size. The number of tax credit units will be determined by the developer. A complete application for the entire project will be necessary at the time of application. HTC selection points will generally be based upon the characteristics of only the tax credit units, with the exception of economic integration points.

**Note: The actual number of restricted units within the project** must be consistent from selection, through carryover and to approval of an 8609.

**L. Annual Credit Amount:**

The tax credit is available each year for 10 years. The amount of tax credit awarded is based on the Qualified Basis multiplied by the Applicable Credit Rate. However, Section 42(m)(2) requires MHFA to limit the amount of the credit to the amount necessary to assure project feasibility under rules established by the IRS. Therefore, the actual amount of tax credits awarded could be less than the maximum allowable if the analysis reveals the project would still be feasible with fewer tax credits.

The IRS publishes the applicable percentages (Applicable Credit Rate) on a monthly basis. These figures are used to calculate the maximum allowable annual credit amount for which the project will be eligible.

**M. Declaration Of Land Use Restrictive Covenants:**

Prior to an allocation of Section 42 tax credits, a project will be subject to a Declaration of Land Use Restrictive Covenants (Declaration) between the owner and MHFA through which the owner commits the building(s) to low income use for an extended use period of at least 15 years after the conclusion of the 15-year compliance period (a total of 30 years).

The Declaration terminates upon: (a) foreclosure of the building (or deed in lieu of foreclosure); or (b) during the extended use period, upon failure of MHFA to find a purchaser by the end of one year after a request by the owner to the MHFA to find a purchaser for the low income portion of the building, at a statutory minimum purchase price. For a period of three years after termination of the Declaration, the owner may not evict existing low income tenants (other than for good cause) and may not increase the gross rent of low income units.

The Declaration must be recorded as a restrictive covenant and submitted to the MHFA prior to MHFA issuing the allocation (42(h)(6), and will set forth the commitments made by the owner to the MHFA in obtaining points including any additional rent restrictions and occupancy requirements placed upon the building at the time of reservation.

Non-compliance with these additional conditions will result in a permanent ban on future allocations of tax credits for all parties involved.

**N. Ineligible Properties:**

Life care facilities and manufactured housing parks are not eligible. Projects with buildings having four or fewer residential units must comply with 42(i)(3)(c).

Any building that receives Section 8 Moderate Rehabilitation Assistance at any time during the minimum 15 year compliance period is ineligible for tax credits. Projects that receive assistance under the Stewart B. McKinney Homeless Assistance Act are eligible for tax credits, as provided in Section 42(c)(2)(B).

Acquisition and/or Substantial Rehabilitation projects with a pre-existing subsidy (any building substantially assisted, financed, or operated under HUD Section 8, Section 221(d)(3), (d)(4) Section 220, Section 8 existing, Moderate Rehabilitation, or the Section 236 program or under the Farmer's Home Administration Section 515 program) will be eligible to apply for tax credits only under the following conditions:

1. It preserves assisted low income housing which, due to mortgage prepayments or expiring rental assistance, would convert to market rate use. This must be demonstrated to the satisfaction of MHFA; or
2. It has been demonstrated to the satisfaction of the MHFA that the building qualifies as a "troubled property." In order to qualify as such, a responsible official of a governmental



lender, such as MHFA, HUD, or RD, must provide a written explanation and documentation that the property is troubled. Generally, the property must be in default or foreclosure.

**O. Passive Loss Restrictions:**

There is a limit on the amount of credit any individual may effectively use due to passive loss restrictions and alternative minimum tax provisions. Consult your tax attorney or accountant for clarification of this regulation.

**P. State Volume Limits:**

Each state is limited to the amount of tax credits it may allocate annually. Minnesota's 2000 per capita volume limit is expected to be approximately \$5,900,000.

Projects with tax-exempt bond financing, which are subject to a separate volume limitation, are not counted against the state volume limit. (See Allocation Plan for further details.)

**Q. Recapture:**

**MHFA reserves the right to recapture tax credits from projects that do not provide evidence satisfactory to MHFA of progress toward completion of the project in accordance with the construction schedule provided at carryover or noncompliance with the terms of the allocation.**

**Part of the credit will also be recaptured if the qualified basis at the close of any year is less than the amount of such basis at the close of the preceding taxable year, or if the minimum number of qualified low income units is not maintained for the complete extended use time period.**

**R. Fair Housing Policy and Contract Compliance**

It is the policy of the MHFA to administer and provide fair and equal housing opportunity in all Agency programs to ensure all residents of Minnesota of similar income levels in the same housing market area have equal access to Agency programs in a manner that affirmatively furthers fair housing. Further, it is the policy of MHFA to prohibit discrimination in the sale, rental, financing, or other services related to housing on the basis of race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to receipt of public assistance, disability, or familial status.

The Policy exists to assist all persons involved with MHFA financed programs in providing fair housing opportunities. The Policy applies to MHFA staff and any one doing business with the Agency.

It is required that all MHFA programs are marketed affirmatively using specific steps for each program. These steps include but are not limited to:

1. Conducting public information forums and other outreach activities geared toward informing and encouraging participation of protected groups.
2. Marketing strategies that reach protected groups (groups of people that come under any of the categories on which bases discrimination is prohibited as mentioned in the opening

paragraph) using conventional methods such as print and electronic media, as well as personal contact, mailings, and use of consultants or MHFA Fair Housing staff.

3. Reviewing federal and state fair housing guidelines periodically to ensure compliance.

Failure to comply with MHFA's fair housing policies, procedures or requirements will prompt Agency staff to prepare a report for the MHFA Commissioner. Continued non-compliance may result in appropriate action by the Commissioner, including expulsion from MHFA programs.

It is the policy of the MHFA to take affirmative action to provide equal opportunity in all of our projects programs and other endeavors. The Agency's goal is to achieve a client and recipient mix that is representative of the people who live in our state and our communities, so that all employment and contractual benefits that develop as a result of our programs will be shared by all residents of Minnesota. This policy applies to all Agency employees and everyone with whom we do business.

## **VI. DEVELOPMENT STANDARDS**

All applications for Housing Tax Credits from the MHFA will be evaluated according to the following standards. (Small projects, hard-to-develop projects, and projects developed in difficult-to-develop areas may be considered eligible for variances from these standards, if justified.)

### **A. Project Cost Reasonableness:**

MHFA will evaluate the costs of each proposed project in comparison to current comparable projects to determine whether the proposed costs are reasonable. The Agency will take into consideration unique characteristics of the project and its comparability to similar projects. MHFA will require additional documentation if the Agency feels the proposed costs are not comparable or reasonable. Current MHFA tax credit project comparables will continue to be the driving factor in approving project costs.

### **B. Minimum Underwriting Standards for Amortizing Debt and Maintenance and Operating Expenses Benchmarks:**

MHFA has established Minimum Underwriting Standards and Management and Operating Expenses (M&O) Benchmarks based upon MHFA's existing portfolio of developments and the recommended Best Practices for HTC Underwriting adopted by the National Council of State Housing Agencies (NCSHA) in 1998. These Minimum Underwriting Standards are described in Exhibit Y (HTC Form-29).

Comparisons will be made to M&O data available from MHFA's maintenance data based on comparable projects. Determinations on whether proposed budgets are reasonable will also be based upon MHFA's management, maintenance and operating experience. M&O numbers will be evaluated on an expense per room/per year basis, the M&O number will not include; reserves, taxes and other tax assessments.

MHFA requires all first mortgage lenders use minimum underwriting standards maintenance and operating expense estimates which are not less than the benchmarks contained in Exhibit Y in their underwriting calculations. Written lender certification and supporting documentation is required.

### **C. Eligible Basis Tax Credit Fees:**

Developer Fees: Include developer overhead, developer processing fees, developer profit, and any other amounts received by the Developer. MHFA will limit the amount of developer fees for the purposes of calculating eligible basis to determine the amount of tax credit. The developer fee is calculated by the MHFA as follows:

Dollar amount of Developer Fee:

TDC-Dollar amount of developer fee.

In some instances, the developer may want to delegate some of the responsibilities to a third party, such as a processing agent or consultant. In such cases, the delegated responsibilities must be thoroughly understood by all parties involved and the fee paid to the third party shall be included as part of the developer fee. The limits are subject to MHFA review. The following limits will be used by the MHFA:

<u>Project Type</u>	<u>Development Limits</u>	<u>Maximum Developer Fee</u>
Acquisition and Substantial Rehabilitation	First 30 Units	15%
Acquisition and Substantial Rehabilitation	Each Unit Over 30	8%
New Construction	First 50 Units	15%
New Construction	Each Unit Over 50	8%

Consultant Fees: Consultant application processing fees will be included within the developer fee limitation and should not exceed 2% of total project costs. Syndication related consultant fees are not to be included in the eligible basis of the project.

Net Construction Cost is defined as “construction costs and on-site work not including contractor profit, general requirements, and overhead.” MHFA will limit the amount of contractor fees for the purpose of calculating eligible basis to determine the amount of tax credit.

Contractor Profit: The maximum contractor profit is 6% of net construction costs.

General Requirements: Items of cost to be considered in this allowance include: on-site supervision, signs, field office expenses, temporary sheds and toilets, temporary utilities, equipment rental, clean-up costs, rubbish disposal, permits, watchmen's wages, material inspection and tests, all of the builder's insurance (except builder's risk), temporary walkways, fences, roads and other similar expenses. The maximum general requirements allowed is 6% of the net construction cost.

Contractor Overhead: The MHFA allows a contractor an overhead allowance based on a percentage of the net construction cost. The permitted maximum allowance is 2%.

It is possible to exceed expenses in one area, if other areas are not at their maximum. The MHFA will allow the collective balance of contractor profit, general requirements and contractor overhead to equal 14%.

Developer as Contractor: When the developer and the contractor are the same entity, in addition to the fee limits stated above, the combined balance of developer fee, contractor profit, contractor overhead and general requirements may not exceed 20% of the total development cost.

**D. Reserves/Contingencies:**

MHFA will require documentation of the amount and disposition of reserves/contingencies. If they revert back to the developer, general partner, or any ownership interest, MHFA will consider the reserves/contingencies as deferred developer fees and the above limits will apply. For letters of credit, bonds, etc., use the actual cost, not face value, when completing the Project Cost Section (#13) of the application, MHFA Form HTC-1.

**E. Comparative Analysis:**

Notwithstanding these Development Standards and the Selection Criteria within this manual and the Allocation Plan, each and every proposed project is analyzed on a comparative basis in a variety of categories to ensure the highest value for the tax credits awarded.

**F. Property Standard:**

All newly constructed properties must meet the Uniform Building Code, the National Standard Plumbing Code and the National Electrical Code Handbook. Rehabilitation projects should strive to

meet these codes when reasonable. Projects containing facilities that are available to the general public must meet the Americans with Disabilities Act (ADA) requirements, and projects combining HTC with another federal source of funding must comply with Section 504 requirements.

In addition, the project must comply with the minimum required development features for family or elderly developments as specified in Exhibit C.

Additional selection points are awarded to proposed projects for the inclusion of additional development features (Refer to Section VII.). There will be no points awarded in the Rural Housing Service/Small Project set aside under the section heading Building Design. (See Section IV. D.)

The architect must certify on the Self Scoring Worksheet for Design Feature Selection Points and the final working plan that all the applicable standards and development features have been incorporated into the plans.

## **VII. PROJECT SELECTION**

**Each application submitted to the MHFA for low income tax credits must meet parts A-E below before consideration for Selection Priorities (parts F and H).**

### **A. First Round Application Requirements**

All applicants statewide must meet one of the threshold types for the first competition as required by Statute and defined in Article 6.2 of the Allocation Plan (Exhibit A). Greater Minnesota projects should also refer to Exhibit Z of this manual for a suggested letter format relating to evidencing thresholds.

In the final competition, projects that previously received an allocation of tax credits will receive priority in accordance with the provisions of Article 6.5 of the Allocation Plan (Exhibit A).

### **B. Market Review**

MHFA will evaluate the completed HTC Market Qualification Information Sheet, the employment data from the Department of Economic Security, and in-house occupancy data to determine the marketability of the proposed project. For market consideration, applicants are responsible for providing evidence to document new employment in the community at the time of application. MHFA relies heavily on the applicant for current information regarding housing need and job/economic growth within city jurisdictions. The MHFA will contact the applicant if there is a question as to the marketability of the proposed projects. The applicant will be given an opportunity to adjust the unit mix and/or number and resubmit prior to the MHFA scoring of selection priority points.

Proposed projects which do not appear marketable and do not modify their proposal will not receive further consideration in the current funding round.

### **C. Design Review**

*The applicant's architect must certify compliance with all the required development features outlined in Exhibit C before the project will be scored and ranked. MHFA will review project costs based on comparability and reasonableness. MHFA may, at its sole discretion, reject applications which appear to have excessive project costs.*

### **D. Site Review**

MHFA staff will conduct a site inspection for each project passing the first three parts (A-C) of the project selection criteria. Site inspections will be conducted analyzing: physical characteristics, surrounding property and community, location of schools, shopping, public transportation, employment centers, community facilities, availability of utilities, water and sewage treatment facilities, and the suitability of the site for the proposed housing.

The MHFA will consider, but is not limited to, the following environmental criteria when evaluating a proposed site:

- Noise
- Flood plains and wetlands

- Site safety
- Toxic and hazardous waste
- Underground storage tanks
- Asbestos

MHFA may, at its sole discretion, reject applications or recapture tax credits from projects which appear unsuitable for the housing proposed.

**E. Maintenance and Operating Expense Review and Underwriting Certification.** MHFA has established Minimum Underwriting Standards and Management and Operating Expense Benchmarks (Also refer to Section VI, B. Minimum Underwriting Standards for Amortizing Debt and Maintenance and Operating Expense Benchmarks) based upon MHFA's existing portfolio of developments and the recommended Best Practices for HTC Underwriting adopted by the National Council of State Housing Agencies (NCSHA) in 1998. These Minimum Underwriting Standards are described in Exhibit Y (HTC Form-29).

MHFA will evaluate the completed Application Form (HTC-1) and Lender Certification contained in Exhibit Y (HTC Form-29) to determine the underwriting criteria used to calculate amortizing debt including but not limited to vacancy rates, debt coverage ratios, construction contingencies, management and operating expenses, reserve accounts, and inflation factors.

The MHFA will contact the applicant if there are any questions regarding the maintenance and operating budget. While MHFA strongly encourages the use of the published minimum standards and benchmarks, the applicant will be given an opportunity to adjust the M&O budget and resubmit prior to the MHFA scoring of selections priority points. At a minimum, the following information must be submitted with the HTC application:

1. Owner narrative summary supporting the proposed maintenance and operating number included in the application.
2. Copies of year-end operating information from three comparable developments that have been in operation at least five years.
3. Name and phone number of local building inspector or housing official who can be contacted regarding each comparable development and its physical condition.

**The applicant should not assume this request will be automatically approved. If no supporting data is provided, the minimum underwriting standards and benchmarks will be used.** The MHFA also reserves the right to reject or adjust the maintenance and operating numbers based upon the information supplied, specific development type, circumstances and/or significant changes to the economics of the development's current market place.

## F. Selection Priorities

Upon completion of the project selection parts A-E, an application may then be ranked according to the points obtained in the selection and preference priorities F and G.

**Please Note:** Deed Restricted Covenants covering the rent restrictions and occupancy requirements presented at selection will be placed on the building(s) at the time of allocation and will be effective for the term of the Declaration of Land Use Restrictive Covenants.

**Pending approval of the current legislative bill, the first round application guidelines and selection priorities would be amended as indicated below.**

<u>Housing Type and Quality Criteria</u>		<u>Point Range</u>
1.	Provides family housing that is not restricted to persons 55 years old or older. At least 75% of the total tax credit units must contain two or more bedrooms and at least one-third of the 75% must contain three or more bedrooms. To receive these points, the project must meet the minimum design features for family projects.	10
2.	Promotes single room occupancy housing. At least 50% of the total tax credit units must be one bedroom or less with rents affordable to households whose income does not exceed 30% of median area income.	10
3.	Promotes rehabilitation in which the amount of rehabilitation must exceed the greater of \$5,000 per low income unit; <u>\$3,000 per low income unit for a qualified preservation project which receives full points for “Preserves Federally Assisted Low Income Housing”</u> ; 10% of the adjusted basis or utilizes historical tax credits.  Cost is for rehabilitation hard costs and <u>cannot</u> include intermediary costs or soft costs identified in MHFA Form HTC-1; plans and/or scope of work must be provided at time of application.	10
4.	A rehabilitation project that provides large family (three or more bedrooms not restricted to 55 years or older) units. At least 60% of the total rehabilitation units must contain two or more bedrooms and at least 20% of the 60% must contain three or more bedrooms. Further, the project must have local financial participation. The amount of local financial participation must attain at least three points under the <u>Development Cost Reduction</u> section.	5
Example:	A 24 unit rehabilitation project must have, at minimum, 15 two bedroom (or larger) units, of which three of the 15 must be three bedroom units. Further, the project must secure assistance in an amount which qualifies for <u>three development cost reduction</u> points.	



5. Projects that are not restricted to persons of a particular age group and in which, for the term of the extended use period (Declaration), a percentage of the units are set aside and rented to persons with the following disabilities: 3-10
- (i) with a serious and persistent mental illness as defined in MN Statute Section 245.462, subdivision 20, paragraph (c);
  - (ii) with a developmental disability as defined in United States Code, Title 42, Section 6001, paragraph (5), as amended;

Housing Type and Quality Criteria

Point  
Range

- (iii) who have been assessed as drug dependent persons as defined in MN Statute Section 254A.02, Subdivision 5, and are receiving or will receive care and treatment services provided by an approved treatment program as defined in MN Statute Section 254A.02, Subdivision 2;
  - (iv) with a brain injury as defined in MN Statute Section 256B.093, Subdivision 4, paragraph (a); or
  - (v) with permanent physical disabilities that substantially limit major life activities, if at least 50% of the units in the project are accessible as provided under Minnesota Rules, Chapter 1340.
- (a) A project in which at least 50% of the total units are set aside and rented to persons receives: ( 10 points)
- or
- (b) A project in which at least 25% of the total units are set aside and rented to persons receives: (3 points)

A commitment from a public or private social services agency to provide services consistent with applicable state licensing requirements for the services must be included with the application.

6. Promotes economic integration. Points will be awarded for the election of the following percentage of tax credit units to the total units (not including manager or model units) in the project: 1-5
- |                 |          |
|-----------------|----------|
| 90%-95%         | 1 point  |
| 80%-89.9%       | 2 points |
| 70%-79.9%       | 3 points |
| 60%-69.9%       | 4 points |
| 59.9% and under | 5 points |

The corresponding applicable fraction will be based on the number of low income units to total units and will be enforced at the time the Carryover Allocation and IRS Form 8609 are prepared to determine the maximum tax credit allocation for the project.

Housing Type and Quality Criteria

Point  
Range

7. Design Features

5

Townhome designed development to include the following:

- (a) The development provides 75% or more units with its entrance at grade and having about one half of the unit's floor area on grade in a two-story structure.
- (b) Playground adequately sized and equipped for the population being served.
- (c) Site layout that is planned for the number of and safety of children proposed to be on site.

To receive these points, the development must meet the minimum HTC design standards for townhomes (See Exhibit C). There will be no points given to walk-up designed (apartment) developments.

8. Governmental Participation - Minneapolis Housing Opportunity Program

5-10

Projects for which the owner has entered into negotiations with the Minneapolis Public Housing Authority (MPHA) and/or a community which is eligible to receive Minneapolis Housing Opportunity Program (MHOP) or other assistance under the Hollman vs. Cisneros consent decree (Hollman). The Hollman assisted units must be located in buildings on the project site.

- (a) A project in which at least 25% of the total units are Hollman assisted receives 10 points:

or

- (b) A project in which at least 10% of the total units are Hollman assisted receives 5 points.

To receive these points at reservation, the applicant must submit governing body resolutions of the owner, the local unit of government, the public housing authority which will own, lease, operate and/or manage the project, and the MPHA evidencing agreement that the Hollman units are to be included in the project. The resolutions must be submitted 15 days prior to MHFA Board approval of recommendation for selection.

It is a requirement for a carryover allocation that the owner of a project selected as a result of points awarded under this category provide evidence acceptable to the MHFA that the owner, local unit of government, applicable local public housing authority and the MPHA have entered into agreements (or other evidence acceptable to the MHFA) under which the units of public housing funded under the Hollman vs. Cisneros consent decree will be included in the project.

Housing Type and Quality Criteria

	<u>Point Range</u>
9. Increases the supply of low income housing in underserved or not previously served cities by Housing Tax Credits. (See Exhibit E for a list of cities.)	1-5
10. Qualified Census Tract (QCT), Difficult Development Areas (DDA), five points will be given to projects located in QCT or DDA (Exhibit D).	5
11. <u>Promotes development cost reduction</u>	3-10

Assistance may be in the form of land donations, below market rate financing and other cost reduction donations. To receive these points, the primary financing proposed must meet MHFA's Minimum Underwriting Standards or demonstrate to the sole satisfaction of MHFA that the development can remain financially feasible for the entire duration of the housing tax credit use. Assistance from the MHFA Super RFP and related joint funders is not eligible for inclusion in this section. Tax Increment Financing is not eligible for inclusion in this section. Points allowed range from 3 to 10.

(a) Land donation of the development site:  
(3 Points)

(b) Below market rate financing (at or below the current Applicable Federal Rate), monetary grants, monetary/in-kind work and materials donations, the donation/waiver of assessment of infrastructure improvement costs, the waiver of proposal related city development fees, local employer contributions, private foundation donations, philanthropic donations. Monetary value of land donation (F.H.A.), Developer Fees, Contractor Overhead, Profit and General Conditions and other Development Team related party fees are not eligible for inclusion in this section. (one of the following):

For developments receiving assistance in excess of 20% of total project costs. (7 Points)

For developments receiving assistance in the range of 10-20% of total project costs. (5 Points)

For developments receiving assistance in the range of 3-9% of total project costs. (3 Points)

Documentation of the amount and the terms of assistance must be provided from the provider of the assistance at the time of application in the form of a development specific letter of intent. In the case of below market rate financing, the applicant must secure a firm financing commitment signed by both the applicant and the lender. The value of the donations and in-kind contributions assistance must be consistent with current market comparable costs for materials and services. Within 90 days of selection, the applicant must provide MHFA with a firm schedule containing specific benchmark dates and actions for the finalization of securing the assistance. If the documentation provided involves words synonymous with “consider” or “may”, (as in, “may award”) regarding the amount and term of the assistance these points will not be awarded.

#### Housing Type and Quality Criteria

Point  
Range

12. Involves as a general partner, a qualified nonprofit organization. To qualify, the nonprofit must be local, organized and incorporated in the State of Minnesota, have a 501(c)(3) or (c)(4) designation, and be a certified Minnesota Community Housing Development Organization (CHDO).

5

#### Additional Criteria

13. Intermediary Costs (Soft Cost). Points will be given to projects with lowest intermediary costs on a sliding scale based on percentage of total project cost. For selected projects, this percentage will be enforced at issuance of the IRS Form 8609.

0-6

% of Total <u>Project</u> Cost	Points
0 - 15%	6
15.1 - 20%	3
20.1 - 25%	2
25.1 - 30%	1
30.1% - Over	0

14. Unacceptable Practices, Transfer of Ownership, and Displacement of Section 8 Tenants. (See Section IV.F.) -10 – -25

#### **G. Preference Priorities:**

1. Extends the duration of low income use for longest period (30 years):

3

Points are awarded to projects which agree to extend the term of the Declaration of Land Use Restrictive Covenants for an additional 15 years past the initial 15 year compliance period.

The owner agrees that the provisions of Section 42(h)(6)(E)(i)(II) and 42(h)(6)(F) (which provisions would permit the owner to terminate the restrictions under this agreement at the end of the compliance period in the event the MHFA does not present the owner with a qualified contract for the acquisition of the project) do not apply to the project, and that the Section 42 income and rental restrictions shall apply for a period of 30 years beginning with the first day of the compliance period in which the building is a part of a qualified low income housing project; and

To receive these points, the primary financing proposed must meet MHFA's Minimum Underwriting Standards or demonstrate to the sole satisfaction of MHFA that the project can remain financially feasible for the entire 30 year duration of low income use.

2. Serves the lowest income tenants with gross rents not to exceed 30% of income. 5-13

Applicants may choose **either option 1 or 2 and at your choice option 3** for the project. This selection will restrict rents only (tenant incomes will not be restricted to the 50% or 30% income level by claiming points in this section).

Option 1- A project in which 100% of the HTC units at the county 50% HUD area median rent limit receives 10 points.

or

Option 2 - A project in which at least 50% of the HTC units at the county 50% HUD area median rent limit receives 5 points.

or

Option 3 - In addition to Option 1 & 2, a project which further restricts 30% of the above restricted units to the county 30% HUD area median rent limit, receives an additional 3 points.

#### **IMPORTANT:**

- All 50% rent restricted units must meet the 50% area median rent for a minimum of five years. After the first five year period has expired rent may be increased to the 60% rent limit over a three year period with increases not to exceed the amount listed in the table below.
- All 30% rent restricted units must meet the 30% area median rent for a minimum of five years. After the first five year period has expired rent may be increased to the 40% rent limit over a three year period with increases not to exceed the amount listed in the table below.

Year	30% of 50% Rent Levels	30% of 30% Rent Levels
1 - 5	30% of 50%	30% of 30%
6	30% of 53%	30% of 33%
7	30% of 57%	30% of 37%
8	30% of 60%	30% of 40%

- MHFA will incorporate these restrictions into the project's Declaration of Land Use Restrictive Covenants.

Must demonstrate to sole satisfaction of MHFA that project can achieve these reduced rents and remain a financially feasible project, IRC 42(M)(2).

Points contingent upon financial plans demonstrating feasibility, positive cash flow on a 15 year proforma and gain MHFA management's approval (for maintenance, operational expenses, and cash flow assumptions).

3. Preservation of Federally Assisted Units.

20

DEFINITION - Any housing receiving project based rental assistance, operating subsidies, or mortgage interest reduction payments. The universe includes public housing, Rural Housing Development financed properties, Section 236 and Section 221(d)(3) interest reduction payments, and any development with a project based Section 8, rent supplement, or rental assistance payments contract.

Housing Type and Quality Criteria

Point  
Range

Preserves federally assisted low income housing which, due to mortgage prepayments or expiring rental assistance, would convert to market rate use or due to physical deterioration would lose its federal subsidies.

MHFA, at its sole discretion, must agree that a market exists for a conversion to market rate housing.

In order to obtain the above points, the federally assisted housing must meet the following criteria:

Units must be considered at risk of losing assistance within two years of Housing Tax Credit Application date as supported by information contained in the application and with final determinations made by MHFA.

And

Applicant must agree to continue renewals of existing project based housing subsidy payment contract for as long as the assistance is available.

And

Applicant must agree to maintain the Housing Tax Credit Units in the development for at least 30 years.

Except for "good cause", applicant must not evict existing subsidized residents and must continue to renew leases for those residents.

4. A project with a HUD Conditional Commitment coupled with rent restrictions. Restrictions must include 100% of the HTC units at the county 50% HUD area median rent listing, or 30% of the HTC units at the county 30% HUD area median rent listing.

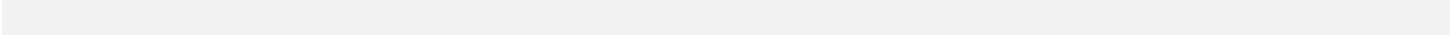
5

**H. Tie Breakers:**

If two or more proposals have an equal number of points, the following will be used to determine selection:

1. First tie breaker will be the total number of points in preference priority criteria; if a tie still remains



2. Second tie breaker, priority will be given to a project located in a city that has not received tax credits in the last two years; if a tie still remains
  3. Third tie breaker, priority will be given to a project with the lowest percentage of intermediary costs; if a tie still remains
  4. Fourth tie breaker will be by lot.
- 

## **VIII. SUBMISSION REQUIREMENTS**

It is the applicant's responsibility to be aware of the submission requirements needed to proceed to the next step in obtaining an allocation. If the applicant is unable to meet the submission requirements (financing, zoning, site control, syndication, construction start, etc.) in a timely manner, or if approvals have expired, the application will no longer be processed and the application fee will be forfeited.

**Required Documents/Exhibits:** It is very important that the applicant follow the order of the Required Documents/Exhibits below. The submissions should be separated by index tabs with corresponding numbers. **DO NOT** submit applications in three ring binders or with plastic casing around the pages. Submissions should be bound only by staples, binder clips, or rubber bands.

The Application of Tax Credits (MHFA Form HTC-1) must be signed by one general partner and the nonprofit partner (if appropriate), officer, director or corporate officer stating that under penalties of perjury, all facts and statements contained in the application and all documents and exhibits submitted are true to the best of their knowledge.

**Any submissions not meeting these directions will be returned to the applicant.** At a minimum, the following documents and exhibits are required to proceed toward allocation at each stage of the process:

### **A. Application Requirements:**

1. For Round I, provide evidence of meeting one of the threshold types defined in Article 6.2 of the attached Allocation Plan.
2. A check for the appropriate application fee (See Section IX.).
3. Market qualification application information (See Section XIII. B.) (Two copies.).
4. Maintenance and Operating Expense Review and Underwriting Certification, Exhibit Y (HTC-29) (See Section VII. E.) (Two copies.).
5. Completed MHFA Form HTC-1 (3 copies), Application for Tax Credits, signed by at least one general partner involved in this project and the nonprofit corporation where a nonprofit set aside is requested. An incomplete or computer generated Form HTC-1 will not be accepted and will be returned to the applicant.
6. Original photographs of exterior and interior of building, if existing, or site and surrounding area, if new construction.
7. Evidence of Site Control. Evidence of title or adequate site control must be submitted with the application. Acceptable evidence includes the following: warranty deed, contract for deed, purchase Commitment, option, or letter of intent from governmental body for sole developer, etc. The evidence of site control must be current, fully executed and extend to anticipated date of carryover allocation, placed in service or provide provisions for extension. For allocation, an attorney's opinion that the applicant has ownership of the property will be required in accordance with Section 42.

Owners should be cautioned that tax credit reservations are site specific and the entire described property is subject to the terms and covenants of the MHFA Declaration of Land Use Restrictive Covenants for Housing Credits.

Loss of site control will result in cancellation of Reservation or Carryover allocation.

MHFA will not accept applications from different applicants for the same site.

8. Legal description of land (not property Tax ID Number) on separate 8-1/2 by 11 sheet of paper and labeled "Exhibit A".
9. Status of zoning. Letter from a local zoning official identifying the project by name, address, the type and number of units, the number of buildings and stories, the on-site parking spaces required, and stating the current zoning designation of the land. If measures are needed to change the status of zoning, indicate the steps required and the timetable for rezoning. MHFA strongly encourages applicants to use Exhibit O, the Approved Form of Zoning Letter for this submission.
10. Status of Utilities. Letters are required from the appropriate public authorities and public utility companies assuring that utilities are available and adequate to serve the project (water, sewer, electric, gas, as applicable).
11. Proposed sources of funds. Provide a current form of documentation including; letter of intent, commitment, etc.; stating all terms and conditions (including dollar amount, number of years, interest rate, debt service coverage, etc.). In the case of below market rate financing, the applicant must secure a firm financing commitment signed by both the applicant and the lender. The value of the donations and in-kind contributions assistance must be consistent with current market comparable costs for materials and services. Within 90 days of selection, the applicant must provide MHFA with a firm schedule containing specific benchmark dates and actions for the finalization of securing the assistance.
  - a. Construction financing;
  - b. Permanent financing - (for RD Projects AD622 and letter of conditions);
  - c. Secondary financing;
  - d. Grants - letter from granting authority;
  - e. Syndication proceeds; and
  - f. Other sources of funds, including any federal, state, local and private subsidies.
12. Development Team Information (HTC Form 19) and Authorization of Release of Information (HTC Form 17) Complete the submissions in Exhibit N (HTC-17 and 19) and attach a one page resume for each team member.
13. Previous Participation. Complete in full Exhibit M (HTC-17).

14. Public Housing Waiting List, Section 42(m)(1)(C) requires the MHFA to consider the applicant's ability to utilize the local public housing authority's waiting list when filling vacant tax credit units. Complete in full. Agreement to Utilize Public Waiting List, Exhibit K. (HTC-11).
15. Calculation of Tax Credit, Exhibit J (HTC-8).
16. A 15-year after tax cash flow proforma (for five or more units).
17. If nonprofit, or local unit of government proof of status, (IRS approval must be included for nonprofit organizations). (See Section IV. C. for more detail.)
  - a. A description of the nonprofit's or unit of government's intended participation in the development and operation of the project.
  - b. Articles of Incorporation.
  - c. Internal Revenue Service (IRS) documentation of status. A nonprofit must have IRS 501(c)(3) or (4) approval from the IRS or expect to receive such designation prior to carryover allocation and meet requirements of Internal Revenue Code 42(h)(5).
18. Notification of local official or suballocator Exhibit L (HTC-18) (Two copies.).
19. Self Scoring Worksheet for selection points, including documentation Exhibit F (HTC-10).
20. Special Services. To obtain points under VII.F.5., legal evidence of such support must be provided to MHFA before a reservation of credit is granted.
21. Location Map. A legible map with clear directions to the site with cross streets or roads must be provided. A complete city map will be required for projects outside the seven county metro area. Site maps must also include the location of:
 

– Housing comparisons	–	Health Clinics
– Hospitals	–	Banks
– Library	–	Post Office
– Grocery stores	–	Clothing Stores
– Drug Stores	–	Day Care Centers
– Churches	–	Special Services
– Elementary, Secondary, and High Schools		

Do not use zoning maps for location maps.

22. Documentation for current utility allowance to include a breakdown of the utilities that a tenant pays directly and the actual charge of each type of utility for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartment, townhome, etc.). Also, include a list of each unit type, total of tenant paid utilities, contract rent, and gross rent.
23. Well developed schematic drawings (plans), only one set for new construction; at a minimum, include site plan, elevations, unit plans and building section.

24. For projects involving acquisition and rehabilitation of existing building;

a. A scope of work must be submitted for each building. Any application involving acquisition and substantial rehabilitation of a RD, HUD, or MHFA financed project **MUST** submit a certification as to need for substantial rehabilitation of the project. The certification shall include a rehabilitation inspection report. This inspection shall be performed by a representative of the appropriate agency or a person approved by that agency. The inspection report will not be accepted if completed more than six months prior to the application submission.

b. If existing below market loans or rental subsidies are involved in the acquisition, provide evidence of the source of funds, including: the original and outstanding amount, terms, and conditions.

c. Relocation Plan, if applicable.

25. Such documents and instruments as are necessary and as may be required by MHFA.

**B. Carryover Requirements:**

In addition to meeting requirements of federal law, the applicant of a project selected in Round 1 must provide no later than 4:30 p.m., **November 1 or the next calendar business day** of the year in which the reservation was issued, a complete carryover package in final form containing all the required documents in a form satisfactory to MHFA. For projects selected in **remaining rounds**, these materials must be submitted no later than 4:30 p.m. **November 15 or the next calendar business day** of the year in which the reservation was issued. Late fees will be enforced (See Section IX.).

**Note: No draft documents or estimates will be accepted.**

1. An updated MHFA Form HTC-1 Application for Tax Credits. The updated application (MHFA Form HTC-1) must be signed by at least one general partner involved in this project and the nonprofit partner, if applicable. All changes from initial application must be highlighted and each changed page must be dated and initialed. For material changes, refer to Section IV.F.3.

Incomplete revisions or those not highlighted, initialed and dated are not acceptable and will be returned to the applicant.

2. A completed, signed and notarized Owner Certification/Application for Carryover Allocation on an approved MHFA form (MHFA Form HTC-4).
3. Building information on an approved MHFA form (MHFA Form HTC-5).
4. An Attorney's Opinion Letter in an approved MHFA form (Exhibit O) verifying:
  - a. The attached legal description of the property is identical to the property selected at application/reservation.

- b. The attachment to the Attorney's opinion letter reflecting the correct legal description to be labeled exhibit A.
  - c. The developer is the owner for tax purposes, or evidencing continued site control, of the land and depreciable real property identified at application/reservation as the project.
  - d. The legal designation and Tax Identification Number (TIN) of the ownership entity that will receive the tax credits, including the name and TIN number of the general or managing partners.
- 5. A written Certified Public Accountant's Certification (HTC-6) in an approved MHFA form (including Exhibit Y) verifying:
  - a. The amount of the reasonably expected basis, the carryover basis, and the percent of the expenses incurred.
  - b. The owner has incurred more than 10% of the reasonably expected basis on the project on or before November 1 or the next calendar business day of the year in which the reservation was issued. For projects selected in remaining rounds, no later than November 15 or the next calendar business day of the year in which the reservation was issued. Also include a statement of non-affiliation with the developer and/or owner.
- 6. Identification of the sources of construction, interim and permanent financing arrangements. Provide a firm lender commitment in the form of a binding agreement as required in Minnesota Section 513.33. The agreement must:
  - a. Be in writing;
  - b. Specify the consideration for the transaction and pertinent terms;
  - c. Be signed by both the lender and the borrower (for RD Projects, Form 1944-51); and
  - d. Be current and state the effective and expiration date.
- 7. Maintenance and Operating Expense Review and Underwriting Certification, Exhibit Y (HTC-29) (See Section VII.E.) (Two copies.).
- 8. A description of any governmental assistance and/or rental assistance. This includes copies of any contracts/agreements executed or any applications made for rental assistance grants for the project.
- 9. A fully executed Election of Applicable Rent Floor (MHFA Form HTC-26) for each building of the development in which there are housing tax credit units. If these required forms are not submitted in fully executed condition at this time, with all elections made

by the owner, the gross rent floor will be determined to have been elected as the gross rent effective on the allocation date of the tax credits.

10. The remainder of the Carryover Fee, based on the annual tax credit amount (See Section IX.).
11. Development Team Resumes/Authorization of Release of Information. One page maximum per individual, current within six months. Complete and attach to front of the submission Exhibit N (HTC-19).

### **C. Placed In Service:**

Generally, the placed in service date for HTC purposes, for a newly constructed building or for rehabilitation expenditures in an existing building, is the date when the first unit in the building is certified as available for occupancy. The placed in service date must occur for all buildings within a project within two years after the award of tax credits.

MHFA will issue IRS Form 8609 within 30 days when all the following items have been received by the Agency in a satisfactory form and substance. Issuance of IRS Form 8609 and subsequent submission of the original to the IRS is to be done only by MHFA or, as applicable, its designated Suballocators Form 8609 shall not be created nor the original filed with the IRS by any other entity. (Also refer to Section IV. F. Unacceptable Practices.). A condition to this effect will be added to the Carryover Agreement.

1. A transmittal letter indicating the project name, address and MHFA assigned number. The letter should request the issuance of IRS Form 8609 and list the following required documents. In the letter, please list the revised information and explain the basis for the changes. The letter must be dated and signed by the owner or authorized individual.
2. Evidence all buildings have been Placed in Service. A copy of the Certificate of Occupancy provided by the local governmental authority having jurisdiction for each building. If not available from the local government, a Certificate of Substantial Completion prepared by the architect will be accepted. For acquisition and rehabilitation, the developer must provide supporting documentation for the elected date.
3. A copy of current utility allowance schedule to include a breakdown of the utilities that a tenant pays directly and the actual charge of each type of utility for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartment, townhome, etc.). Also, include a list of each unit type, total of tenant paid utilities, contract rent, and gross rent.
4. A cost certification by C.P.A. (MHFA Form HTC-9).

All costs of projects owned by all entities for five or more units must be cost-certified when construction has been completed and before MHFA can complete its final evaluation.

Projects with four or less units must submit a sworn construction statement and/or certification by owner, as appropriate.

5. An updated application (MHFA Form HTC-1) signed by at least one general partner involved in this project and nonprofit partner, if appropriate. Highlight all changes from carryover application, re-date and initial the revised pages. For material changes, refer to Section IV.F.3. Incomplete revisions or those not highlighted, initialed and dated are not acceptable and will be returned to the developer. In particular, check to ensure that changes in number of units, rents, utility allowance, source of funds (loans, grants, etc.), hard and soft cost changes and qualified basis are updated on the revised application pages.
6. An Attorney's Opinion Letter verifying the taxpayer is:
  - a. The owner of the property that is to be part of the project.
  - b. The legal designation of the ownership entity that will receive the tax credits. (The opinion should include that the business is in good standing and duly authorized in Minnesota.)
  - c. The name, legal designation, and Tax Identification Number (TIN) of all the general partner(s), the contact person and the required authorized signatories. If the partners are an organized entity, such as a limited liability corporation, a limited liability partnership, or an organized partnership, then provide the above information for each.
  - d. Identification and copies of any waivers required by Section 42 obtained from the IRS.
7. A signed and dated statement documenting the amount and disposition of Reserves, Contingencies, and any cash savings. If any of the above revert back to developer/owner, general partner or any ownership interest, the MHFA will consider them deferred developer fees, and for purposes of tax credit allocation, restrict the developer fees as specified in the Procedural Manual.
8. A copy of the unrecorded MHFA Declaration of Land Use Restrictive Covenants for Housing Credits. The Declaration must be completed and recorded before the end of the first credit period to preserve the tax credits allocated to the project. Check with your tax advisor as to timing of filing and claiming of credit.
9. Documentation of the final amount of tax credit proceeds or receipts generated. Provide a copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing terms and conditions.
10. Original Owner Certification (MHFA Form HTC-3) verifying:
  - a. The placed in service date as defined in IRS Notice 88-116 for each building and/or type of tax credit. Month and year should correspond with occupancy certificate. If the month and year do not correspond, submit a written statement indicating the reason;



- b. Compliance with all applicable design requirements; and
  - c. Compliance with all requirements of selection; and additional or special conditions of reservation, commitment or carryover.
11. Copies of final loan or grant documents for all sources of funds (mortgage or note) which support the amount, terms, and conditions stated on MHFA Form HTC 1, page 7.
  12. Maintenance and Operating Expense Standards and Certification, Exhibit Y (HTC-29) (See Section VII.E.).
  13. A 15-year after-tax cash flow proforma (for five or more units).
  14. Such documents and instruments as are necessary and as may be required by MHFA.
  15. If ownership entity has changed, a copy of assignment, a revised HTC-27 (Exhibit W), updated resumes of new project team members (See Section IV.F.1.), and the Transfer of Ownership Fee (See Section IX.).
  16. A copy of the executed final Partnership Agreement.
  17. Original photographs of completed building(s).
  18. A completed Building Map (MHFA Form HTC-28, Exhibit T) with a current rent roll attached.
  19. Non refundable allocation fee equal to 3% of the annual tax credit amount (See Section IX.) if not already paid at carryover.
  20. A fully executed Development Team Information form (HTC -19) and written disclosure as to any and all Identity of Interest parties (See Section IV.H and I. of the Procedural Manual).

## **IX. FEES**

### **A. Application Fee:**

An application fee must be submitted with the application. The fee is non-refundable and is the greater of \$700 or \$30 times the total units, with a maximum of \$2,000 for for-profit development entities. Nonprofits will be charged an application fee of \$700 that is also non-refundable. The nonprofit cannot be affiliated with or controlled by a for-profit individual or organization as determined by MHFA. For multi-building projects, MHFA will require only one application and a single fee.

### **B. Supplemental Fee:**

The supplemental fee is \$350.00. This fee will be charged to projects that resubmit their proposals in Round 2 or Round 3 of the allocation year and were underwritten by MHFA in Round 1 or Round 2.

1. The non selected project will be required to submit a new application package as described in Section IV.L.
2. A selected project (must have been selected in the same year) requesting additional credits will be required to submit a new application package as described in Section IV.K.

### **C. Reservation Fee:**

After the project has been selected, a reservation fee of 3% of the allocation must be paid to the MHFA. The developer will have 30 days in which to pay the reservation fee and maintain their tax credit allocation. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced or the tax credits are returned or unused.

### **D. Carryover Fee:**

At the time the building is placed in service or has been issued a carryover allocation, an allocation fee will be due which is equal to 3% of the annual tax credit amount reserved by MHFA. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced or the tax credits are returned or unused.

### **E. Carryover Late Fee:**

Developers that;

1. Do not submit a carryover application by the established due date; or
2. Submit a substantially incomplete carryover application by the established due date;

Must pay a \$1000 late fee plus a supplementary \$200 for each day from the original due date through the date on which the MHFA receives the carryover application in a substantially complete form.

The fee will not be allowed as an eligible cost in carryover basis and must be paid at the time the carryover application is substantially complete.

**F.**     **Monitoring Fee:**

MHFA will charge a proposed initial annual monitoring fee of \$15 per unit, based on the total number of units, with a minimum of \$50. This fee may be increased depending upon the requirements of the U.S. Treasury, IRS, or increased costs of MHFA. The fee will be due in a manner and time as prescribed by the Agency. Failure to pay the fee will result in MHFA notifying the IRS that the project is out of compliance.

**G.**     **Transfer of Ownership Fee:**

Upon approval from the MHFA, a transfer of Ownership fee of \$2,500 must be submitted to the MHFA along with updated materials of the current owner/management team for each project in which 50% or more the development team is new since reservation or carryover allocation.

**H.**     **Check Cashing Procedure:**

Applicants' payments for fees (in the form of checks) will be held pending verification of the accuracy of the amount tendered and submitted materials.

**MINNESOTA HOUSING FINANCE AGENCY  
HOUSING TAX CREDIT PROGRAM**

**EXHIBITS**

**Application Materials**

<b>Exhibit A</b>	MHFA Allocation Plan (attached to Procedural Manual)
<b>Exhibit B</b>	Market Qualification Information
<b>Exhibit C</b>	Architectural Requirements/Point Structure
<b>Exhibit D</b>	Qualified Census Tract
<b>Exhibit E</b>	Underserved Areas
<b>Exhibit F</b>	Self Scoring Worksheet (HTC-10)
<b>Exhibit G</b>	IRS Notice 88-80 Determination of Income
<b>Exhibit H</b>	IRS Regulations 1.42-6 Carryover and 1.42-10 Utility Allowance
<b>Exhibit I</b>	Section 42 Internal Revenue Code
<b>Exhibit J</b>	Agency Determination of Tax Credit (HTC-8)
<b>Exhibit K</b>	Agreement to Utilize Public Housing Waiting List (HTC-11)
<b>Exhibit L</b>	Notification of Local Official and Suballocator (HTC-18)
<b>Exhibit M</b>	Previous Participation (HTC-17)
<b>Exhibit N</b>	Development Team Resume (HTC-19)
<b>Exhibit O</b>	MHFA Approved Form of Zoning Letter
<b>Exhibit P</b>	Rent and Income Limits
<b>Exhibit Q</b>	Guidelines for Determining Section 501(c)(3)
<b>Exhibit R</b>	RH Service Areas
<b>Exhibit S</b>	Declaration of Land Use
<b>Exhibit T</b>	Building Map (HTC-28)
<b>Exhibit U</b>	Final Cost Certification (HTC-9)
<b>Exhibit V</b>	Certification by Owner/Application for Issuance of IRS 8609 (HTC-3)
<b>Exhibit W</b>	Transfer of Ownership Form (HTC-27)
<b>Exhibit X</b>	Rent Floor Election/Certification (HTC-26)
<b>Exhibit Y</b>	Maintenance and Operating Expense Review and Underwriting Certification_(HTC-29)
<b><u>Exhibit Z</u></b>	<u>Threshold Letter</u>

